



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHEMOIL CORPORATION,

Plaintiff,

v.

M/V DARYA VISHNU, its engines, tackle
apparel, etc.

Defendant *IN REM*.

IN ADMIRALTY

Case No.: 3:13-cv-5494

**ORDER APPOINTING SUBSTITUTE
CUSTODIAN FOR VESSEL**

Plaintiff Chemoil Corporation having appeared, now makes the following recitals:

1. On June 20, 2013, plaintiff filed its verified Complaint herein, requesting that the vessel M/V DARYA VISHNU ("Vessel"), its engines, machinery, and other appurtenances, etc., be arrested, condemned and sold to pay plaintiff's claims and for other proper relief.

2. It is anticipated that the Clerk of the Court will be authorized by this Court to issue a Warrant of Arrest commanding the United States Marshal for this District to arrest and take the defendant vessel into custody and to detain it in custody until further order of this Court.

3. It is contemplated that the United States Marshal will seize the defendant vessel forthwith. Custody by the U.S. Marshal requires the services of one or more keepers at a charge

Order Appointing Substitute Custodian for Vessel

1

Law Office of James F. Whitehead, PLLC
2003 Western Avenue, Ste 330
Seattle, Washington 98121
Ph: 206-448-0100
Fax: 206-448-2252

1 of at least \$900.00 per day per keeper, not including charges for moorage and the other services
2 usually associated with safekeeping vessels similar to the defendant vessel.

3
4 4. The defendant vessel is currently moored at the Port of Longview. After arrest, it
5 may be necessary to move the vessel to the facilities of Marine Lenders Services, LLC at 5350
6 30th Avenue NW, Seattle, Washington, or to other suitable moorage. It may also be necessary to
7 offload any remaining cargo from the vessel.

8
9 5. Plaintiff is agreeable to allowing Marine Lenders Services, LLC to assume the
10 responsibility of safekeeping said vessel and Marine Lenders Services, LLC has consented to act
11 as custodian of the vessel until further order of this Court. Fees and expenses to be charged by
12 Marine Lenders Services, LLC will be substantially less than the cost of leaving the defendant
13 vessel in the custody of the U.S. Marshal.

14
15 6. Buck W. Fowler Jr., Managing Member by declaration, has stated that Marine
16 Lenders Services, LLC has no interest in the outcome of this lawsuit, can arrange for adequate
17 facilities and supervision for the proper safekeeping of the vessel, and has obtained the legal
18 liability insurance through Great American Insurance and Marine Policy # OMH-540-52-76 with
19 policy limits of not less than \$5,000,000 which is expected to be adequate to respond in damages
20 for loss of or injury to the defendant vessel or for damages sustained by third parties due to any
21 acts, faults or negligence of the substitute custodian. Further, in his declaration, Buck W. Fowler
22 Jr., on behalf of Marine Lenders Services, LLC has agreed to accept custody of the vessel and its
23 equipment in accordance with the terms of this Order.
24

25
26 7. In consideration of the U.S. Marshal's consent to the appointment of Marine
Lenders Services, LLC as substitute custodian, plaintiff agrees to release the United States and

1 the U.S. Marshal from any and all liability and responsibility arising out of the care and custody
2 of the defendant vessel and its equipment, from the time the U.S. Marshal transfers custody of
3 the vessel over to the substitute custodian, and plaintiff further agrees to indemnify and hold the
4 United States and the U.S. Marshal harmless from any and all claims whatsoever arising out of
5 the substitute custodian's possession and safekeeping of the vessel.
6

7 **Order**

8 NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

9
10 1. That upon the seizure of the defendant Vessel, the Vessel, its engines, tackle and
11 other appurtenances, pursuant to the Warrant of Arrest, the U.S. Marshal for the Western District
12 of Washington is authorized and directed to surrender custody of the vessel to Marine Lenders
13 Services, LLC as substitute custodian herein, and that upon such surrender, the Marshal shall be
14 discharged from his/her duties and responsibilities for the safekeeping of the vessel and held
15 harmless from any and all claims arising out of said custodial services.
16

17 2. That Marine Lenders Services, LLC, as substitute custodian, shall see to and be
18 responsible for the safekeeping of the defendant vessel. The duties of the substitute custodian
19 shall include, but are not limited to, ensuring that there is adequate, safe moorage for the vessel.
20 The substitute custodian is not required to have a person live on board the vessel, but an officer
21 or authorized agent of the substitute custodian shall go on board the vessel, from time to time to
22 carry out the duties of substitute custodian. No other person shall be allowed to enter on the
23 vessel except as provided for herein or as otherwise expressly authorized by order of this Court.
24

25 3. That the defendant vessel may be moved by tug or other safe means from its
26 present moorage to adequate, safe moorage at the facilities of the substitute custodian on the

1 Lake Washington Ship Canal, Seattle, Washington or other suitable location. The
2 substitute custodian shall notify the office of the U.S. Marshal that the vessel is to be moved and
3 shall again notify the office of the U.S. Marshal when the vessel has been moved. Once the
4 vessel has been moved to the facilities of the substitute custodian or other suitable moorage, the
5 defendant vessel shall not be moved again without further order of the Court.
6

7 4. That Marine Lenders Services, LLC, as substitute custodian, may if necessary
8 offload any cargo aboard the vessel and arrange for storage of the same at a suitable storage
9 facility. The substitute custodian shall notify the office of the U.S. Marshal prior to engaging in
10 any such offloading of cargo and again upon the completion of any such offloading.
11

12 5. That Marine Lenders Services, LLC, as substitute custodian, may if necessary
13 offload any fuel and arrange for disposal of the same. The substitute custodian shall notify the
14 office of the U.S. Marshal prior to engaging in any such offloading and again upon the
15 completion of any such offloading.
16

17 6. That Marine Lenders Services, LLC, as substitute custodian, may, but is not
18 required to, retain a marine engineer familiar with the vessel and to take him or her on board the
19 vessel with authorized agents of Marine Lenders Services, LLC to assist in the securing of the
20 vessel.
21

22 7. That Marine Lenders Services, LLC, as substitute custodian, may, but is not
23 required to, remove those pieces of electronic equipment on board the vessel, if any,
24 which may be easily removed without damage to the vessel, and that such removed electronic
25 equipment shall be stored in a safe, secure storage pending further Order of this Court.
26

1
2 Presented by:

3 James F. Whitehead
4 Law Office of James F. Whitehead, PLLC
5 2003 Western Avenue, Ste 330
6 Seattle, Washington 98121
7 Ph: 206-448-0100
8 Fax: 206-448-2252

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 Attorneys for Plaintiff